IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE M.NARAYANA REDDY

WRIT PETITION NO : 707 of 2002

Between:

1. Muzafar Ali, S/o Mahaboob Ali, aged 60 years, Occ: Retd Govt. Service,
2. Mohd. Iqbal, S/o Chinna Mahaboob Ali, aged 35 years,
   Occ: Agriculture,
3. Masood Ali, S/o Bada Mahaboob Ali, aged about 46 years,
   Occ: Private Service,

4 Mohd. Jaweed Ahmed, S/o Mohd. Khaza, aged 50 years,

Occ: Business,

5 Md. Isahaq, S/o Burhanuddin, aged 40 years,

Occ: Hotel Business,

6. Masood Ahmed, S/o Mohd. Ahmed, aged 32 years,
   Occ: Business,
7. Manzoor Ahmed, S/o Mohd. Ahmed, aged 30 years,
   Occ: Private employee,

(All are R/o Hanward village & Mandal, Mahaboobnagar District)

..... PETITIONERS

AND

1. The District Collector, Mahaboobnagar District.
2. The Mandal Revenue Officer, Hanward Mandal, Mahaboobnagar District.
3. The Secretary, Wakf Board,

   State of A.P., Hyderabad.
4. S. Venkat Ram Reddy, S/o S. Janardhan Reddy,

   Aged about 62 years,
5. S. Vijya Sunder Reddy, S/o S. Janardhan Reddy,

   Aged about 58 years,
6. S. Ramkrishna Reddy, S/o S. Janardhan Reddy,

   Aged about 56 years,
7. S. Sudhakar Reddy, S/o S. Janardhan Reddy,

   Aged about 51 years,

(Occupation of all is agriculture, all are residents of Hanward village and Mandal, Mahaboobnagar District.)

(RR4 to 7 are impleaded as per Court Order in W.P.M.P.4700/2002

dated 30/06/2003.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the writ of Mandamus directing the respondents to take steps to stop illegal encroachments and constructions in Goutana land which is recorded asWakf property and being used as Muslim Grave Yard admeasuring Ac.6-00 Gts situated at Hanwada village and Mandal, Mahaboobnagar District and bounded by: North: House of Dhangar; South: Road and Gadi; East: Pedda Cheruvu; West: House of Janardhan Reddy Deshmukh.

Counsel for the Petitioners: Mr. Wasim Ahmed Khan.

Counsel for Respondents 1 and 2: THE ADVOCATE GENERAL

Counsel for the Respondent No.3: Mr. Abdul Muqeth Qureshi

Counsel for Respondents 4 to 7: Mr. K. Mahipathy Rao.

The Court made the following Oral Order : (per Sri Devinder Gupta, CJ)

This petition is filed as “Public Interest Litigation” by seven individuals with the grievance that in Hanwada Village, there is a land admeasuring about Ac.6.00 being used for Muslim Grave Yard since times immemorial. It is stated that out of this land, an extent of 2.00 acres of land is in the name of Ali Akbar Ashow Khana. One Dargah is also located in the land known as “Rawoofullha Sha Qhadri Rh”. It is stated that Urs will be taken from the said Dargah every year. Even at the time of Moharam, procession will take place from that place. It is stated that the land has also been recorded as ‘Goutan’ land in the revenue records and there is no Survey number assigned to it. But, it is being used as Muslim grave yard. The land is also alleged to have been duly entered in the register maintained by the Wakf Board and is stated to be notified as Wakf property. It is stated that despite it being so notified, some encroachers are trying to encroach upon the land and when some construction was sought to be raised by encroachers in the grave yard, with great difficulty the same was stopped by the petitioners and others. It is stated that respondent No.3 is duty bound to maintain and protect Wakf property. Consequently, a direction is sought against the respondents to take necessary steps to stop illegal encroachment and to keep the property free from encroachments.

During the pendency of the writ petition, respondents 4 to 7 got themselves impleaded. They have resisted the claim of the petitioners by filing affidavit in reply. The stand taken by the respondents 4 to 7 in the affidavit is that the description of the

land is vaguely stated by the petitioners. According to the deponent:

> "An area of about 13 acres surrounded by a compound and adjacent to Survey No. 417 (dry) of Hanwada village is our ancestral property and once upon a time it was almost like a fort (Gadi) and this land is always being called as Gadi land, which means Fort land. Whenever, a dispute is raised by Muslims of the village, we gave land of about 800 sq.yards for Muslim Grave Yard and we also gave about 800 sq. yards of land for using it as Mosque during Peerla (Muslims) festival and the said piece of land viz., Grave yard is enclosed by Kadi stones. Now they want our entire land to be declared as Wakf land. I submit that a dispute was raised as early as in the year 1957 with regard to the land in our occupation stating that it is not a personal property but a Gouthan land, i.e., Government land. Our crops and tamarind trees on the said land were sought to be attached and taken over into Government custody. The R.D.O. Mahabubnagar in File No.1120/56 initiated proceedings and on our objections, an enquiry was done on the spot by the R.D.O., Mahabubnagar in the presence of the villagers, the then Sarpanch and my late father Sri Janardhan Reddy and by order dated 27.3.1957, the R.D.O. held that neither the Government nor the Pnachayat have any claim over the said GADI land and that it is our private land."

Further details have been submitted to various proceedings saying that their title was duly accepted in those proceedings and consequently out of the land, an extent of 3.00 acres of land was sold under Registered Sale Deed in 1983. The land was also given for construction of Veterinary Hospital and Godown, Police Station etc. The land was also sold under various registered sale deeds where constructions have been raised.

In nut shell, Respondents 4 to 7 have denied the claim of the petitioners saying that the land in question is neither a goutan land nor Muslim Wakf property and the petition is mis-conceived and is liable to be dismissed.

Sri Mohd. Zaheer, Manda Revenue Officer, Hanwada Mandal has filed affidavit saying that a complaint was received ,which was enquired into, but, in view of the conflicting claims, the then Mandal Revenue Officer passed an order on 28.7.2001 directing the parties to approach the competent Court for redressal of their grievances.

Mr. Mirza Hasan Ali Baig, Chief Executive Officer of A.P. State Wakf Board has pointed out that when some vested interests were trying to dispose of the Wakf properties, on 1.6.2001, a letter was addressed to the Station House Officer, Hanwada Police Station, Mahaboobnagar with a request to stop the illegal sale of Wakf property. It is stated that thereafter another letter was also sent by the Wakf

Board to the District Collector and District Revenue Officer, Mahaboobnagar and also to the Station House Officer, Hanwada Police Station requesting them to stop the illegal sale and construction on the Wakf property. It is not denied by the Chief Executive Officer that it is the obligation of the Wakf Board to protect the Wakf property.

Having considered the conflicting claims of the parties as regards the property in question, we are of the view that such disputed questions must be decided by the appropriate and competent authority constituted for the purposes of the Act. Wakf Act,1995 is the Legislation brought in for providing better administration of Wakfs and for matters connected therewith or incidental thereto. The State Government is required to constitute Wakf Tribunals under Section 83 of the Act, which, alone is competent to determine any dispute, question or other matter relating to a Wakf or Wakf property under the Act. The jurisdiction of the Civil Courts is barred under Section 85 of the Act. The decision of the Wakf Tribunal is subject to further appeals. Section 54 requires the Chief Executive Officer of the Wakf Board to take steps for removing of encroachment from wakf property. This, of course, has to be done by him after issuing notice in the prescribed manner and on failure to remove the encroachments from the Wakf property, to take further steps for removal of encroachments.

In this view of the matter, it will not be appropriate for us to adjudicate in these proceedings as to whether the property is or is not a Wakf property. The respondent-Wakf Board is under obligation to protect the property, in case, it is a Wakf property. Action as such, has to be taken by the Chief Executive Officer of the respondent-Board in that behalf and any person aggrieved by the order passed by the Chief Executive Officer is entitled to invoke the jurisdiction of the Tribunal constituted under the Act.

Accordingly, we direct the 3rd respondent to consider the entire material as has been brought upon and then to take appropriate decision and in case he will come to the conclusion that the property is a Wakf property and that there has been an encroachment on the said property, he will order for removal of such encroachments. Respondent No.3 will take appropriate decision in the matter within a period of four months from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. No costs.

DEVINDER GUPTA, CJ

Date: 6th December, 2004

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M. NARAYANA REDDY, J

pnb

To

1. The District Collector, Mahaboobnagar District.
2. The Mandal Revenue Officer, Hanward Mandal, Mahaboobnagar District.
3. The Secretary, Wakf Board,

   State of A.P., Hyderabad.
4. Two CCs to the Advocate General, High Court of A.P., Hyderabad (O.U.T)
5. Two CD copies.